

APPEAL NO. 022032  
FILED OCTOBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 17, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter and that she is entitled to SIBs for the second quarter. The appellant (carrier) appealed the hearing officer's determination that the claimant is entitled to SIBs for the second quarter. No response was received from the claimant. There is no appeal of the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals the hearing officer's findings in favor of the claimant on the direct result and good faith criteria for SIBs entitlement for the second quarter.

Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The medical reports from the claimant's treating doctor and the claimant's testimony sufficiently support the hearing officer's finding that the claimant's underemployment during the qualifying period for the second quarter was a direct result of the claimant's impairment.

With regard to the good faith criterion, Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. According to one of the carrier's exhibits, the claimant's Application for SIBs (TWCC-52) for the second quarter contained 46 listed job contacts during the qualifying period for the second quarter. The claimant testified that she was hired during the last week of the qualifying period for the second quarter by one of the employers she had sought employment with that week. The claimant said that she worked for that employer for about a month, and that employer wrote a letter verifying the claimant's employment. The claimant then obtained another job for several weeks, and the claimant's treating

doctor then reported that the claimant's condition had deteriorated and that she was functioning at only a sedentary level, with no repetitive movements of her hands. The hearing officer found that during the qualifying period for the second quarter, the claimant had some ability to work, that she returned to work in a position which was relatively equal to her ability to work, and that she attempted in good faith to obtain employment commensurate with her ability to work. The hearing officer concluded that the claimant is entitled to SIBs for the second quarter. We conclude that the hearing officer's findings on the good faith criterion for SIBs entitlement for the second quarter are supported by sufficient evidence. Texas Workers' Compensation Commission Appeal No. 001100, decided July 5, 2000. The hearing officer's decision that the claimant is entitled to SIBs for the second quarter is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge